IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10825 of 2003
with
SPECIAL CIVIL APPLICATION NO. 225 OF 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAKESHKUMAR HIRALAL PATEL

Versus

STATE OF GUJARAT

Appearance:
MR BIPIN P JASANI for the Petitioners
MR VM PANCHOLI, AGP, for Respondent No. 1
MR HS MUNSHAW for Respondent No. 2
MS BELA A PRAJAPATI for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 03/03/2004

ORAL JUDGEMENT

1. Leave to delete respondent No.3.

2. Rule. Learned Assistant Government Pleader, Mr. Pancholi, waives service of notice of Rule on behalf of respondent No.1, learned Advocate, Mr. A.M. Barot, for Mr. H.S. Munshaw, waives service on behalf of

respondent No.2 and learned Advocate, Mr. Vishal Shukla, for Ms. Bela A. Prajapati, waives service on behalf of respondent No.4.

3. Since, in both these petitions, common questions are involved, they are both heard together and disposed of by this common judgment.

4. The petitioners were involved in criminal cases and were arrested. They had to remain in custody for a period of more than 48 hours and, therefore, their services were terminated by the respondent authorities on that ground alone, undisputedly, without giving any notice. The petitioners have, therefore, rushed to this Court seeking indulgence.

5. The say of respondent No.2 is that they have acted as per the rules and condition No.6 of the letter of employment and, therefore, no indulgence may be granted.

6. Learned Advocate, Mr. Jasani, appearing for the petitioners has drawn attention of this Court to an order passed by this Court in Special Civil Application No.11641 of 2003 on 17th November, 2003 and in Letters Patent Appeal No.599 of 2004 in Special Civil Application No.11641 of 2003, dated 25th February, 2004, where, in the case of an identically situated employee, indulgence was granted by this Court by quashing an setting aside the order and directing reinstatement of the employee. It was also clarified that the said order will not preclude the appointing authority from taking any disciplinary action against the employee in accordance with law and that the question of regularising the service of the employee during the interrugnum period, i.e. from the date of termination till reinstatement, shall be decided on completion of the trial. The said order passed in the Special Civil Application was challenged by the respondents in Letters Patent Appeal and, in the Letters Patent Appeal, the Division Bench observed that there was no merit in the appeal and the same was dismissed.

7. In view of the fact that, undisputedly, the cases of the petitioners are identically situated, the same order has to follow. Both these petitions are allowed. The orders of termination dated 3.5.2003, Annexure-E and D, respectively, terminating the services of the petitioners are hereby quashed and set aside. The petitioners shall be reinstated in service forthwith. Rule is made absolute in both these petitions. Parties

shall bear their own costs. It is clarified that this order shall not preclude the appointing authority from taking any disciplinary action against the petitioners in accordance with law. The question of regularising services of the petitioners during the interrugnum period from the date of termination till they are reinstated shall be decided after completion of the trial.

8. Direct service is permitted.

[A. L. DAVE, J.]
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